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4 UNITED STATES DISTRICT COURT  
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
6 OAKLAND DIVISION

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8 WILLIAM CORDOBA,  
9 Plaintiff,  
10 vs.  
11 SILVIA PULIDO,  
12 Defendant.

Case No: C 12-04857 SBA

**ORDER RE PLAINTIFF'S MOTION  
FOR ADVERSE INFERENCE  
INSTRUCTION**

Dkt. 155, 184, 189

14 The Court previously referred Plaintiff's Motion for Adverse Inference Instruction to  
15 Magistrate Judge Sallie Kim ("Magistrate") for resolution. In her Report and  
16 Recommendation, the Magistrate found that the Defendant destroyed her file regarding  
17 Stanley Kelly, an inmate with whom she allegedly had a sexual relationship. In evaluating  
18 whether an adverse inference instruction was warranted in light of Defendant's conduct, the  
19 Magistrate found that: (1) Defendant had an obligation to preserve the file when it was  
20 destroyed; (2) she acted with "a culpable state of mind"; and (3) the evidence was  
21 potentially relevant to the claims made by Plaintiff. Dkt. 184 at 4-6 (applying Clear-View  
22 Techs., Inc. v. Rasnick, 2015 WL 2251005 at \*7 (N.D. Cal. May 13, 2015)). The  
23 Magistrate recommended that – "if evidence about Defendant's allegedly inappropriate  
24 relationship with Mr. Kelley is admitted into evidence at trial" – the Court should give a  
25 permissive adverse inference instruction pertaining to Defendant's spoliation of evidence  
26 Dkt. 184 at 4. However, she recommended denying Plaintiff's request for an adverse  
27 inference instruction based on Defendant's failure to preserve electronic mail and a draft  
28 report evaluation of Plaintiff. Id. at 7.

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1 In response to the Magistrate's Report and Recommendation, Defendant filed an  
2 objection solely with respect to the language of the adverse inference instruction proposed  
3 by the Magistrate. Dkt. 163. Neither party has objected to any other aspect of the  
4 Magistrate's Report and Recommendation.

5 Notwithstanding its prior referral of Plaintiff's motion, the Court finds, upon further  
6 review of the matter, that it is premature to address Plaintiff's request for an adverse  
7 inference instruction. The resolution of whether such an instruction is warranted (and the  
8 appropriate language of the instruction, if given) is dependent, as a threshold matter, on  
9 whether and to what extent evidence regarding Defendant's alleged sexual relationship with  
10 Stanley Kelley is admitted during trial. Since these admissibility issues have yet to be  
11 resolved, the Court finds it preferable from both a procedural and substantive standpoint to  
12 revisit this issue after the admissibility of such evidence is fully briefed. In view of the  
13 parties' dispute regarding the relevance of Defendant's sexual relationship with Mr. Kelley,  
14 they should address the admission of such evidence in their motions in limine.

15 Accordingly,

16 IT IS HEREBY ORDERED THAT Magistrate's Report and Recommendation is  
17 ACCEPTED, except with respect to her recommendation to give an adverse inference  
18 instruction, which is REJECTED as premature. Plaintiff's Motion for Adverse Inference  
19 Instruction is DENIED without prejudice to renewal upon the Court's resolution of the  
20 admissibility of evidence pertaining to Defendant's relationship with Mr. Kelley. The  
21 Clerk shall terminate Docket Nos. 155, 184 and 189.

22 IT IS SO ORDERED.

23 Dated: 9/6/17

  
SAUNDRA BROWN ARMSTRONG  
Senior United States District Judge